

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FRANCISCO ANTONIO SERRANO,)	
)	
Petitioner,)	
)	
vs.)	NO. CIV-21-0858-HE
)	
DONALD EMERSON,)	
)	
Respondent.)	

ORDER

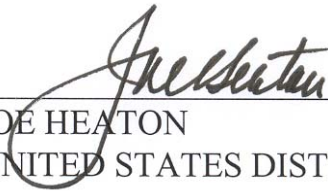
Petitioner Francisco Antonio Serrano, a federal prisoner appearing *pro se*, filed this case seeking relief under 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to Magistrate Judge Gary M. Purcell for initial proceedings. Upon preliminary review of the petition, Judge Purcell has issued a Report and Recommendation recommending that the petition be dismissed without prejudice because the petition should be brought as a § 2255 habeas petition, not under § 2241.

The Report advised petitioner of his right to object to the Report by September 20, 2021. Petitioner has not objected to the Report, thereby waiving his right to appellate review of the factual and legal issues addressed therein. Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the court **ADOPTS** the Report and Recommendation [Doc. #4]. The petition is **DISMISSED** without prejudice. The court also concludes that a certificate of appealability should not issue because petitioner has failed to demonstrate “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

Dated this 4th day of October, 2021.



JOE HEATON
UNITED STATES DISTRICT JUDGE